No. 26.

Brief of Akin for D. E.

Filed Oct. 9, 1899.

Supreme Court of the United States

OCTOBER TERM, A. D. 1899.

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Clerk.

THE KEOKUK AND HAMILTON BRIDGE COMPANY,
PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS
DEFENDANTS IN ERROR.

26

Appeal from the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR.

EDWARD C. AKIN,
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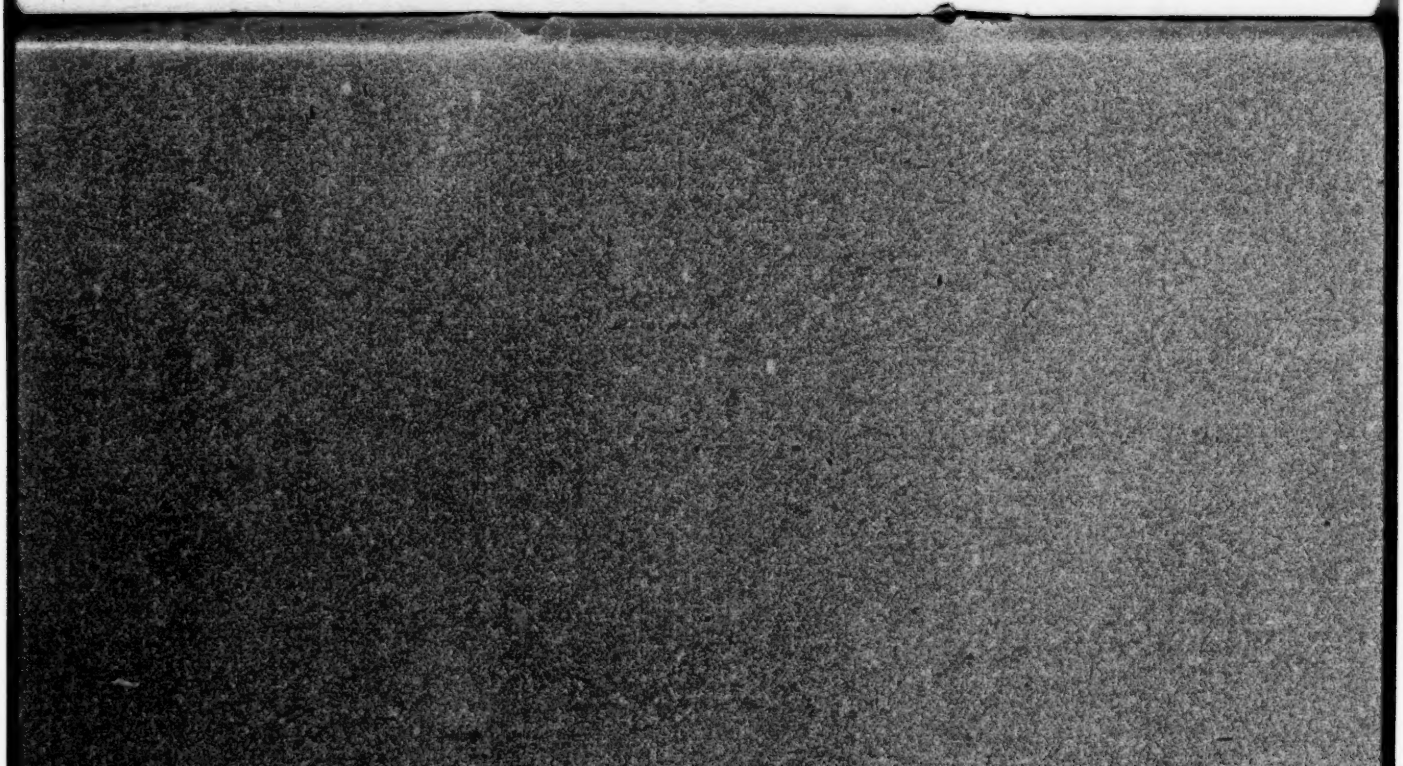
For other briefs of Akin in this case see No. 23 of 1898. (Same title).



IN THE

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BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR.

TAXATION OF INSTRUMENTS OF INTER-STATE COMMERCE BY THE STATES.

That the states can not tax, regulate or control inter-state commerce requires no citation of authorities. The states have no right to impose restrictions either by the way of taxes, discrimination or regulation upon commerce between the states. But the states have a right to tax the instruments of such commerce as other property of like description is taxed within their jurisdiction. Thus, an interstate bridge across a river is an instrument of com-

merce, and the portion lying within a state may be taxed by that state like other property of the same kind wholly within the state.

Covington and Cincinnati Bridge Co. *v.* Kentucky, 154 U. S., 204, 212.

Henderson Bridge Co. *v.* Kentucky, 166 U. S., 150.

While no state can impose any taxes or burdens upon the privilege of doing business of inter-state commerce, yet it has the unquestionable right to tax the instrumentalities engaged in such commerce.

Mayer *v.* Baltimore and Ohio Railroad Co., 127 U. S., 117.

Pullman's Palace Car Co. *v.* Pennsylvania, 141 U. S., 18.

Cleveland, Cincinnati, Chicago & St. Louis Railroad Co. *v.* Backus, 165 U. S., 439, 445.

Henderson Bridge Co. *v.* Kentucky, 166 U. S., 150.

Thus, the property of railroads, telegraph and sleeping car companies engaged in inter-state commerce, may be taxed in the several states through which their lines of business run without violating any federal restrictions of law.

Western Union Telegraph Co. *v.* Massachusetts, 125 U. S., 530.

Massachusetts *v.* Western Union Telegraph Co., 141 U. S., 40.

Pullman's Palace Car Co. *v.* Pennsylvania, 141 U. S., 18.

Maine, *v.* Grand Trunk Railroad Co., 142 U. S., 217.

Western Union Telegraph Co. *v.* Taggart, 165 U. S., 1.

Under these decisions of the United States Supreme Court, the bridge across the Mississippi river is an instrument of inter-state commerce and each state may tax the part lying within its jurisdiction as it taxes its other property.

That Illinois may tax the Keokuk bridge to the middle of the main channel of the Mississippi river does not admit of a doubt.

Domicile of Corporations.

The domicile of a corporation is the state of its organization.

Potter on Corporations, Section 10.
Quincy Bridge Co. *v.* Adams county, 88 Ill., 615.
Ohio & Mississippi Railroad Co. *v.* Weber, 96 Ill. 443.
Keokuk Bridge Co. *v.* People, 161, Ill. 132.
Bank of Augusta *v.* Earle, 13 Pet. U. S. 586.

A corporation can not emigrate to another sovereignty or state.

Bank of Augusta *v.* Earle, 13 Pet. U. S., 586.
Paul *v.* Virginia, 8 Wall, U. S., 168.
St. Louis *v.* The Ferry Co., 11 Wall, U. S., 423.

It is a fundamental principle that a person must have a domicile in the state in order to be taxed and the thing a situs therein.

Hays *v.* Pacific Mail Co., 17 How. U. S., 506.
Morgan *v.* Parham, 16 U. S. 471.

A corporation is liable to taxation upon all its property which is of such a nature as to be taxable at the residence of the owner and the kind of property denominated as "capital stock" does not mean shares of stock, either separately or in aggregate, but designates the property of a corporation subject to taxation as a homogenous unit, partaking of the nature of personalty, subject to the burdens imposed upon it at the domicile of the owner.

Keokuk Bridge Co. *v.* People, 161, Ill., 132.
National Bank *v.* Commonwealth, 9 Wall, U. S., 353.
Illinois Railroad Tax Cases, 92, U. S., 575.
Commonwealth *v.* Standard Oil Co., 101 Pa. St., 119.

The capital stock of a corporation formed by the consolidation of corporations of different states under the Illinois laws is properly taxable in Illinois, as the corporate exist-

ence springs from the legislation of said State, and is to be treated and regarded by the authorities of the State as domiciled there.

Keokuk Bridge Co. *v.* People, 161 Ill., 132.

Quincy R. R. Bridge Co. *v.* Adams county, 88 Ill., 615.

Therefore, after the consolidation of the two corporations under the Illinois laws, Illinois was the domicile and could tax its capital stock and the consolidated corporation could not emigrate to Iowa, as a corporation must dwell in the place of its creation and can not emigrate to another State.

Bank of Augusta *v.* Earle, 13 Pet. U. S., 586.

A consolidation formed from pre-existing corporations is a citizen of each of the states which have chartered any of the constituents.

Fitzgerald *v.* Missouri Pacific Railway Co., 45 Fed. Rep., 812.

Ohio & M. R. R. Co. *v.* Wheeler, 1 Black, 286.

Railroad Co. *v.* Whittens, Admr., 13 Wall, 270.

Muller v. Dows, 94 U. S., 444.

Ohio & M. R. R. Co. *v.* Weber, 96 Ill., 443.

If the Court please:

This case and No. 23, on the docket of this Court, October term, 1898, were argued and submitted together.

Case No. 23 was dismissed by this Court, and an order for reargument made in this case, to be heard at the present October term of this Court.

This action is a proceeding by the people of the State of Illinois against the Keokuk & Hamilton Bridge Company for the taxes due the State of Illinois, and the several municipalities therein, for the year 1894. It was tried in the County Court of Hancock county, Illinois at the August term, 1895. Judgment was rendered against the Bridge Company and in favor of the people, for the amount of taxes due. The Bridge Company appealed the case to

the Supreme Court of Illinois, and the judgment of the lower Court was affirmed January 18, 1897. The case is reported in full in 167 Ill., at page 15. (See record, page 198–9.) A motion for rehearing was denied June 21, 1897. Appeal was prayed and granted to this Court, and record filed October 29, 1897. The bridge tax for the year 1894 is $2,708.61; capital stock tax, $1,019.71; and dyke tax, $254.92.

The questions presented by the record in the court below are as follows:

First. It was contended by the plaintiff in error that the line between Illinois and Iowa is the middle of the river, measuring from shore to shore, and that the State of Illinois, in assessing and taxing said Keokuk and Hamilton Bridge, have assessed and taxed it beyond the boundary line of the State of Illinois.

Second. The Keokuk and Hamilton Bridge Company was claimed to be a consolidated corporation formed by consolidation of an Iowa with an Illinois corporation, and it was therefore claimed by the Bridge Company that the State of Illinois illegally assessed and taxed the capital stock of said corporation in Illinois, when one-half thereof should have been assessed and taxed in the State of Iowa.

It will be seen by an examination of the record that the two questions above stated present the main issues in this case.

We submit to the Court as our first proposition the following:

The line between the State of Illinois and the State of Iowa is not the middle of the river, measuring from shore to shore, but the line between the States is the middle of the main navigable channel of the Mississippi river.

In the case between the Keokuk and Hamilton Bridge Company vs. the People, decided by our Supreme Court in 1893 and reported in 145 Illinois at page 596, this proposition was argued at great length by that Court, and

we can not do better in presenting our views than to quote from the opinion in that case rendered by Justice Craig, beginning at page 601:

"There is much discussion in the arguments of the respective parties as to the true location of the boundary line between Illinois and Iowa, where the bridge in question is located, across the Mississippi river; but as that question has recently been decided by the Supreme Court of the United States, we shall content ourselves with citing but a few of the many authorities bearing on the question."

In Wheaton on International Law (3d Eng. ed.) Sec. 200, the author said: "By the treaty of peace, concluded at Paris in 1763, between France, Spain and Great Britain, the Province of Canada was ceded to Great Britain by France, and that of Florida to the same power by Spain, and the boundary between the French and British possessions in North America was ascertained by a line drawn through the middle of the river Mississippi, from its source to the Iberville, and from thence through the latter river and the lakes of Maurepas and Pontchartrain to the sea."

The boundary line thus established between the territories belonging to England and France, as established by the treaty was the middle of the Mississsippi river, and it is clear that a line thus established between two governments would be the middle of the main channel or channel of commerce, so that each government might have a free and unobstructed navigation of the river. After peace had been established between thd United States and England, the territory lying on the east of the Mississippi river passed into the hands of the United States and that on the west remained in the hands of France, the boundary remaining the same as before.

The act of Congress of April 18, 1818, authorizing the people of Illinois to form a constitution, after defining the northern boundary, declared as follows: "Thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river." (1 Star & Curt., p. 50.)

The same language as respects the boundary has been preserved in the constitution of the State of 1818, 1848 and 1870. (Id., pp. 55, 68, 99.)

The enabling act for Iowa, passed in 1848, (5 U. S. Stat., p. 742,) fixes the eastern boundary of the State as follows: "Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude," etc.

The enabling act for the admission of Wisconsin, enacted in 1848, 9 U. S., Statute 56, gives the western boundary of the State as follows: "Thence down the center of the main channel of the Mississippi river to the northwest corner of the State of Illinois."

Where the middle of a navigable river becomes the boundary line between two states, as was the case with Illinois and Iowa, the middle of the current or channel will be regarded as the boundery line.

Thus Wheaton, Sec. 192, says: "Where a navigable river forms the boundary of coterminous states, the middle of the channel, or thalweg, is generally taken as the line of separation between the two states, the presumption of law being that the right of navigation is common to both, but this presumption may be destroyed by actual proof of prior occupancy and long undisturbed possession, giving to one of the riparian proprietors the exclusive title to the entire river."

In Creasy on International Law, Sec. 231, it is said:

"It has been said that where a navigable river separates neighboring states, the thalweg, or middle of the navigable channel, forms the line of separation. Formerly a line drawn along the middle of the water *medium filum aquæ*, was regarded as the boundary line, and still will be regarded *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now considered the line of demarcation."

See, also, Buttenuth *v.* St. Louis Bridge Company, 123 Ill., 535, where it is held that the middle of the main chan-

nel of a river between states will be regarded as the boundary line.

In St. Louis *v.* Rutz, 138 U. S. 226, it is said:

"The enabling act of April 18, 1818, 3 Stat., 429, Sec. 2, under which Illinois was organized as a State and admitted into the Union, made the middle of the Mississippi river the western boundary of the State. The enabling act of March 6, 1830, 3 Stat., Sec. 2, under which Missouri was organized as a state and admitted into the Union, made the middle of the main channel of the Mississippi river the eastern boundary of Missouri, so far as its boundary line was coterminous with the western boundary of Illinois. It has been held by the Supreme Court of Illinois, Buttenuth *v.* St. Louis Bridge Company, 123 Ill., 535, that these two enabling acts are to be construed as in *pari materia*, and that the common boundary line between Missouri and Illinois is the 'middle of the main channel of the Mississippi river.' The 'middle of the main channel of the Mississippi' has been constantly treated as the eastern boundary of the State of Missouri. Jones *v.* Soulard, 24 How., 41; The Schools *v.* Risley, 10 Wall, 91."

The question here involved was before the Supreme Court of the United States in The State of Iowa *v.* The State of Illinois, 147 U. S., p. l., at the October term, 1892, of the Court, and after a review of the authorities bearing on the question the Court, among other things, said:

"That the true line in navigable rivers, between the states of the Union, which separates the jurisdiction of one from the other, is the middle of the main channel of the river. Thus the jurisdiction of each state extends to the thread of the stream, that is to the middle of the channnel, and, if there be several channels, to the middle of the principal one, or rather the one usually followed. Under the authorities, we think it is plain that the boundary line between Iowa and Illinois, where the bridge of appellant is constructed, is the middle of the main channel of the river; in other words, the thread of the stream."

The boundary line between the territories belonging respectively to Great Britain and France, as fixed by the treaty of 1763, was the middle of the Mississippi river. It needs no argument to show that an international boundary

line, established by this language, would be the middle of the main channel, or channel of commerce. Every consideration, both of dominion and commercial equality, would give to the language this meaning.

Where the enabling act creating a state out of part of the territory embraced in the treaty uses the same language to define the boundary as that used in the treaty, it will certainly receive the same construction as that given to the treaty, unless for most obvious reasons another construction should obtain.

After the peace between the United States and Great Britain, the territory on the east of the Mississippi passed to the United States, while that on the west remained with France.

Unquestionably the boundary line remained the same. The same consideration which fixed it in the old relations would retain it in the new.

Subsequently the State of Illinois was created out of the territory on the east of this boundary line, and the State of Iowa out of that on the west.

Wheaton says (Section 192, p. 291):

"Where a navigable river forms the boundary of coterminous states, the middle of the channel, or *thalweg*, is generally taken as the line of separation between the two states, the presumption of the law being that the right of navigation is common to both; but this presumption may be destroyed by actual proof of prior occupancy and long undisturbed possession, giving to one of the riparian proproprietors the exclusive title to the entire river."

Therefore, according to this eminent author, the middle of the channel of the river is the boundary line. What is the channel of the river? Clearly it is not the same thing as the bed of the river.

Wheaton says (Sec. 202, p. 301).

"The channel of the Mississippi was remarkably winding, crossing and recrossing perpetually from one side to the other of the general bed of the river."

The general bed of the river is the space between the two shores, but the channel of the river is the navigable portion of the river—that portion of the river suited for and generally used for the purposes of navigation. As Wheaton says, the middle of the channel, or thalweg, is taken as the line of separation between two states, because the presumption of law is, that the right of navigation is common to both. What each nation or power would insist upon was an equal right to the navigation of the river. This could not be obtained if the river was divided by drawing a line between two shores unless the width of the navigable channel was coincident with the distance between the two shores. Each nation demands one-half of the navigable channel in whatever part of the river it is located, and the states created out of the territory belonging to these nations would take the same boundaries.

Therefore, where the middle of the river is made the boundary, the line is drawn in the middle of the navigable channel. It is in this sense that the words are used in the treaty of 1763.

In Creasy on International Law, p. 222, Sec. 231, it is said:

"It has been stated that where a navigable river separates neighboring states, the thalweg, or middle of the navigable channel, forms the line of separation. Formerly a line drawn along the middle of the river, the *medium filum aquae*, was regarded as the boundary line, and still will be regared *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now considered to be the line of demarcation."

In Halleck on International Law, Vol. 1, p. 145, Sec. 23, it is said:

"Where the river not only separates the coterminous states, but also their territorial jurisdiction, the thalweg, or middle channel, forms the line of separation through

the bays and estuaries through which the waters of the river flow into the sea. As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very unequal parts. But the deeper channel may be less suited, or totally unfit, for the purposes of navigation, in which case the dividing line would be in the middle of the one which is best suited and ordinarily used for that object."

Cited with approval in Wheaton's Digest of International Law of the United States, Vol. 1, p. 97.

While we readily admit that the right of navigation which would fix the middle of the navigable channel as the boundary between separate or alien nations does not operate with the same force between the States of the American Union, yet the question remains, where a boundary line has been fixed between two alien powers, and the same line, described in particularly the same languarge, becomes the boundary between two states of the American Union, will the changed political condition so affect the force of the language used as to change the boundary line?

The enabling act for admitting Wisconsin, passed in 1846, (9 U. S. Stat., p. 56), gives the western boundary of that state as "thence down the center of the main channel of that (Mississippi) river to the northwest corner of the State of Illinois," therefore, it must be in the middle of the main channel of the river, and it is down along the middle of the main channel of the river that the western boundary of Illinois runs. If the words, "in the middle of the river," in the enabling act of Illinois, and the words, "middle of the main channel," in the enabling acts for Iowa and Missouri, do not describe the same line, then it would result that there is some portion of the river which would be in none of the states, a construction which could not be allowed.

In Buttenuth v. St. Louis Bridge Co., 123 Ill., 535, this Court says, p. 551:

"The suggestion, Congress by its enabling acts may have established one line in the Mississippi river for the

eastern boundary for Missouri, and another line, farther east, for the western boundary of Illinois, has nothing, in law or in fact, upon which to rest. The whole legislation on this subject shows, as before remarked, it was the intention of Congress to make the river a 'common boundary' between these states, and the expression used in both enabling acts, although the words used may not be the same, make the middle of the main channel of the permanent river the boundary line."

We understand the Court here to say that the middle of the main channel of the permanent river is the boundary line. That the permanent river is one thing, and the main channel of the permanent river is another thing. The main channel, as we view it, and as attorneys for plaintiff view the matter, is not the same thing as the river from shore to shore. What, then, is the main channel of the river? We believe that the law is that it is the channel which is best suited and is usually used for the purposes of navigation—the channel of commerce used by vessels in the carrying trade.

This question is not a new one in this Court. In the case of the State of Iowa v. the State of Illinois, in 147 U. S., the case brought in this Court for the purpose of determining the boundary line between the two states, in this case, which is the same issue as the one raised here, the Bridge Company take the same position as the State of Iowa took in that case, while our position is the same as taken by the State of Illinois.

Justice Field, in delivering the opinion in that case, states most tersely the contention as follows:

"The Mississippi river flows between the states of Iowa and Illinois. It is a navigable stream, and constitutes the boundary between the two states; and the controversy between them is as to the position of the line between its banks or shores which separates the jurisdiction of the two states for the purposes of taxation and other purposes of government.

"The complainant, the State of Iowa, contends that, for taxation and for all other purposes, the boundary line is the middle of the main body of the river, taking the middle

line between its banks or shores without regard to the 'steamboat channel,' as it is termed, or deepest part of the stream, and that, to determine the banks or shores, the measurements must be taken when the water is in its natural or ordinary stage, neither swollen by floods nor shrunk by droughts.

"On the other hand, the defendant, the State of Illinois, claims that, for taxation and all other purposes, its jurisdiction extends to the middle of 'the steamboat channel' of the river, wherever that may be, whether on its east or west bank—the channel upon which commerce on the the river by steamboats or other vessels is usually conducted, and which for that reason is sometimes designated as 'the channel of commerce.' "

The State of Iowa cited, on behalf of its contention, the case of The Dunlieth and Dubuque Bridge Company v. The County of Dubuque, 55 Iowa, 558, wherein the Supreme Court of Iowa decided that the boundary line was the middle of the river measuring from bank to bank. The State of Illinois cited, on behalf of its contention, the case of Buttenuth v. St. Louis Bridge Company, 123 Ill., 535, wherein the Supreme Court of Illinois decided that the boundary line was the middle of the channel of commerce. This Court, it is conceded, decided in accordance with the contention of the State of Illinois.

In the above case this Court, after reviewing the issues fully, and also reviewing the two last cases above cited, in the close of their opinion, say:

"The opinions in both of these cases are able, and present in the strongest terms the different views as to the line of jurisdiction between neighboring states, separated by a navigable stream; but we are of the opinion that the controlling consideration in this matter is that which preserves to each state equality in the right of navigation in the river. We, therefore, hold, in accordance with this view, that the true line in navigable rivers between the states of the Union, which separates the jurisdiction of one from the other, is the middle of the main channel of the river. Thus the jurisdiction of each state extends to the thread of the stream, that is, to the 'mid-channel,' and, if there be several channels, to the middle of the principal one, or, rather, the one usually followed."

It seems to us that the authorities cited and the finding of the Court, as above quoted, in the case of Iowa v. Illinois, 147 U. S., forever settles the question as to the line of jurisdiction between the State of Iowa and the State of Illinois, and establishes the main channel of the river as that line.

On this branch of the case, the question alone remains to be settled as to whether or not the assessment, as made, was valid. If that part of the bridge assessed was within the State of Illinois, then the Supreme Court of Illinois should be affirmed.

The report made by the commissioners being set aside, the assessor followed the decision of this Court in the case of Iowa v. Illinois, and our own Supreme Court, and assessed to the state line as determined in that case.

And upon the trial of the case in the County Court, the people introduced a large number of witnesses to show where the main navigable channel of the river was. And our examination of their testimony clearly shows that the channel of the river at the bridge was not to exceed 550 feet east from the Iowa shore. In this case 1,567 feet of the bridge was assessed as in Illinois, leaving 625 feet in Iowa, being fully 75 feet more than the evidence shows belongs there. In fact, that the channel is where we showed it to be, is not denied, but it is insisted that the line between the states is the middle of the river, measuring from shore to shore. This case was very fully presented to the Supreme Court of Illinois, and the opinion of that Court is short and finds the facts fully, and we can not better present the case than by inserting that opinion, which is found in 167th Illinois, beginning at page 15, and is as follows:

Mr. Justice Wilkin delivered the opinion of the Court:

"This is an appeal from the judgment of the County Court of Hancock County for delinquent taxes assessed against appellant for the year 1894. The grounds of reversal are, first, the assessments were fraudulently made; second, that whole of the capital stock is assessed in this State, whereas an undivided half of it is taxable in Iowa; third, the judg-

ment is upon an assessment upon a part of appellant's bridge not in the State of Illinois, but in the State of Iowa."

The facts upon which the first two grounds are based are substantially the same as those upon which similar objections were raised in cases between the same parties in 145 Ill., 596, and 161 id., 132 and 514, and are disposed of adversely to appellant by those decisions.

The last point is based upon the contention that the State line crosses the bridge of the appellant at a place marked by the commissioners appointed in Iowa v. Illinois, 47 U. S., 1. The record now before us shows that the order of the Supreme Court of the United States confirming the report of these commissioners was subsequently set aside and vacated. The commissioners who made that report were examined as witnesses on the hearing below on behalf of appellant, and it is clear from their testimony that they fixed the line between the two states at the center of the river and not at the center of its main channel. The decree of the Supreme Court of the United States, under which they were appointed, ordered as follows:

"The boundary line between the State of Iowa and State of Illinois is the middle of the main navigable channel of the Mississippi river; and as the counsel of the two states desire that this boundary line be established at the nine bridges across the Mississippi river, it is further ordered that a commission be appointed to ascertain and designate at said places the boundary line between the two states, such commission consisting of three competent persons to be named by the Court upon suggestion of counsel, and be required to make the proper examination, and to delineate on maps prepared for that purpose the line as determined by this Court and report the same to this Court for its further action. Following that decree and other authorities cited in the opinion, we said in the case in 145 Ill., (on p. 604): 'Under the authorities, we think it is plain that the boundary line between Iowa and Illinois, where the bridge of appellant is constructed, is the middle of the main channel of the river—in other words, the thread of the stream.'

"Accepting the uncontroverted testimony of witnesses in that case as fixing the center of the main channel, and hence the state line, at a certain point, it was held that a portion of the bridge in the State of Iowa had been improperly assessed as in this State. In the present case, 1,567 feet were assessed as being in Illinois and 625 treated as being in Iowa. Several experienced river men, captains and pilots of steamboats running on the Mississippi river at that point for a great many years, both before and since the bridge was built, were introduced by the People in this case, and testified that the east side of the navigable channel at the bridge was not to exceed 550 feet east from the Iowa shore. It is conceded if the state line is where the testimony of these witnesses fixes it, all that part of the bridge included in this assessment is in this State. Although appellant introduced several witnesses, including the commissioners above mentioned, for the purpose of establishing the line further east, they do not contradict the People's witnesses as to the location of the main navigable channel, but they treat the middle of the bed of the river as the thread of the stream. At least we think the County Court was justifiable in finding, from all the evidence, that no part of the bridge assessed is in the State of Iowa. Its judgment will accordingly be affirmed."

In a brief of plaintiff in error presented in this case on the former hearing counsel argue at some length that the line between Iowa and Illinois is the middle of the river, without any reference to the channel, and on pages nine and ten of their former brief insist that the witnesses on the part of the people do not locate the main navigable channel. We submitted in our former brief the finding of our Supreme Court upon that question, which we think is conclusive, but let us now see what the people did show upon that issue:

Samuel Ball says: I am a steamboat captain and pilot. I began this business April 10, 1837 (Record, P. 30). I know where the main navigable channel of the Mississippi runs; is opposite Keokuk (R., Page 31).

Q. 16, P. Re. "About how far is it from the Iowa shore? A. I presume that the whole bridge is about 2,000 feet;

the channel never was to exceed 400 to 500 feet wide, and that would leave about 1,600 feet to the Illinois shore, that is, from the extreme east part of the channel.

Q. 28, P. 33 of Rec. State to the Court whether or not there was another channel that boats could pass up and down the Mississippi with an ordinary stage of water except the one you have described. Ans. No, sir.

Robert Ferris: I began steamboating in 1853 on the Mississippi; began as special pilot in 1846. On page 38 and 39 he says: I know where the navigable channel of the Mississippi river is between Keokuk and Hamilton. It is about 500 feet from the Iowa side. This is the channel used by steamboats going up and down the river. There is no other channel and never was since I know, except the one I have named. On page 40 this same witness says: "I was connected with steamboating as captain and pilot for 40 years."

Samuel Speake: I have been a pilot since 1858 (Rec., P. 16).

Q. 14, Page 47. Tell the Court where the main navigable channel of the river was under that bridge prior to the building of the bridge. A. The only channel is about, I suppose, 30 feet outside of the little pier to the left. I suppose about 500 feet from the Iowa shore (Rec., P. 47). The channel I have described is the channel used by steamboats going up and down the river and they used no other (page 47).

R. S. Owen. Page 50: I am 65 years old. Have been pilot and master of steamboats for 50 years. I began as pilot in 1852. Question 13 on page 51: How far east of the pivot pier is the navigable channel of the river. A. I consider the pivot pier as standing in the middle of the channel. It is where we run before the bridge was there.

I don't know of any other channel. "The record contains much more of this kind of testimony, but we deem this sufficient to show that the main navigable channel is not

to exceed 500 feet east of the Iowa shore. There is nothing in the record to show any other channel, as our Supreme Court well says in passing upon the question.

As to the second question presented by this record: We insist that the Keokuk and Hamilton Bridge Company is an Illinois corporation for assessment purposes, and that its situs or domicile is in Illinois and not in Iowa; that a corporation can not have two domiciles, and that the assessments were made in precise conformity with the returns or reports made by the Keokuk and Hamilton Bridge Company, and were not therefore fraudulently made.

The act incorporating this company is as follows:

"AN ACT *incorporating and chartering the Keokuk and Hamilton Bridge Company.*

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That Artois Hamilton, Hugh W. Sample, John McCune, Bryant Bartlett and Samuel R. Curtis, their associates, successors, heirs and assigns, be and are hereby incorporated and created into a body corporate under the name and style of the Keokuk and Hamilton Bridge Company, with power to build, construct, maintain and use a bridge for railroad and other purposes over the Mississippi river or that portion within the jurisdiction of the State of Illinois, from or near the town of Hamilton, in the County of Hancock, to Keokuk, in Iowa, in such manner as will not materially obstruct the navigation of said river. And to connect by railroad or otherwise said bridge with any railroad or railroads terminating or approximating to such bridge within this State or the State of Iowa, to unite and consoldidate its franchise, stock and property, or any portion thereof with any railroad or other company or companies in this or any other state, to fix the amount of the capital stock, to divide, transfer, increase or diminish the same, to create and contract debts, borrow money, lease or mortgage the whole or any portion of the property, effects and franchises of the company; to contract, bargain and agree with any person, persons, company or companies for and in the construction and use of said bridge and the appurtenances, to sell or lease said bridge or franchise or any portion thereof to any

company or corporations, and take and acquire the right of way, stone and all other privileges essential and usual in the construction of the improvement herein authorized according to the laws of this State relating to the rights of way for internal improvements or other purposes. The said company, their associates, successors or assigns to have five years from the passage of this act to commence said bridge and ten years thereafter to complete the same.

Sec. 2. This act to be taken as a public act from and after its passage, and shall be liberally and beneficially construed in favor of the company for the purposes herein contained.

SAMUEL HOLMES,
Speaker of the House of Representatives.
JOHN WOOD,
Speaker of the Senate.

Approved February 13, 1857.

WM. H. BISSELL."

By this act of the Legislature this company became under this act as its charter an Illinois corporation.

The fact that there were two corporations, known as the Keokuk and Hamilton Bridge Company, one in Illinois and the other in Iowa, and the further fact that such Iowa corporation was consolidated, as permitted by the laws of Illinois, with the Illinois corporation, does in no wise change the fact that it is an Illinois corporation, but would seem to leave no doubt upon that question.

It is claimed by the plaintiff in error that, notwithstanding the fact that the bridge company was originally chartered as an Illinois corporation, and that the Iowa corporation consolidated with the Illinois corporation under the laws of Illinois, that they continued to be, as it were, two corporations, and the objection made is, that Illinois can not assess and tax the capital stock of this consolidated corporation, insisting that one-half of the capital stock is assessable and taxable in the State of Iowa. This might have well been taken if there were two distinct corporations, but there can be no such thing in Illinois,

under our laws, nor are we aware of any such law anywhere, as a part of a corporation being in one state and a part in another after consolidation.

At pages 175 and 176 of the printed record the following statement appears: "It is admitted that the defendant Bridge Company is a consolidated corporation, formed by consolidation of an Iowa with an Illinois corporation, to construct a bridge across the Mississippi river between Hamilton, Illinois, and Keokuk, Iowa, with main office at Keokuk."

The Keokuk and Hamilton Bridge Company is a corporation of the State of Illinois, and as such, under our laws, is liable to pay taxes upon its capital stock. This is hereby permissible and fully authorized under section 1, article 9 of our constitution, which is as follows:

"Sec. 1. The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn keepers, grocery keepers, liquor keepers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

Under the above article of the Constitution the Legislature of Illinois, as it was authorized to do, passed the following act for the assessment of property and for the levy and collection of taxes. Approved March 30, 1873. In force July 1, 1873. Section 1 of which is as follows:

"That the property named in this section shall be assessed and taxed, except so much thereof as may be in this act exempted:

"First—All real and personal property in this State.

Second—All moneys, credits, bond or stocks and other investments, the shares of stock of incorporated companies

and associations, and all other personal property, including property in transitu to or from this State, used, held, owned or controlled by persons residing in this State.

"Third—The shares of capital stock of banks and banking companies doing business in this State.

"Fourth—The capital stock of companies and associations incorporated under the laws of this State."

The question raised herein by the plaintiff in error is not a new one in Illinois, but has been passed upon by our Supreme Court not only in this case, but in a number of others.

In the case of the Quincy Railroad Bridge Company v. The County of Adams, reported in 88 Ill., at page 615, the Court, in passing upon a similar question, say:

"This was an action of debt brought to the Adams circuit court by the County of Adams, plaintiff, and against the Quincy Railroad Bridge Company, defendants, to recover a tax assessed against the capital stock of the bridge company for the year 1874 for county purposes. There were two special counts and the common counts in the declaration, to which the defendants pleaded seven pleas."

Only two of said pleas are important to the issues in this case, namely, 3 and 4. Number 3 is as follows:

"That it is a corporation created and existing under the laws of this State and the State of Missouri, and not otherwise."

Number 4 is as follows:

"That defendant is a corporation created for the purposes of constructing and maintaining a railroad bridge over and across the Mississippi river, under the laws of Illinois and Missouri, the said river forming a boundary between these states, and that the corporate powers and existence of the defendant company are, under and by virtue of the laws of this State, only a part."

These two pleas, it seems to us, present clearly the second question in issue in the case at bar, and the Court in passing upon these pleas, say:

"The demurrer to the special pleas clearly presents this question, and it has been argued elaborately and ably by counsel, are appellants a corporation so created under the laws of this State as to bring it under the operation of the fourth clause of section one of the Revenue act of 1872?"

"The first section provides that the property named in this section shall be assessed and taxed, except so much as in this act may be exempted:

" 'First, all real and personal property in this State. Second, all moneys, credits, bonds or stocks, etc. Third, the shares of capital stock of banks and banking companies doing business in this State. Fourth, the capital stock of companies and associations incorporated under the laws of this State.' Rev. Stat. 1874, p. 357.

"Appellants give the history of the creation of their company, by which it will be seen that by an act of the General Assembly of this State, approved February 10, 1853, and renewed by act of February 15, 1865, the Railroad Bridge Company was incorporated. By an act of the Legislature of the State of Missouri, date not given, the 'Quincy Bridge Company' was incorporated, the object and purpose of both these corporations being to construct and operate a railroad bridge across the Mississippi river at Quincy, in this State, such object not being attainable by either company separately or by virtue of the authority thus granted by either state, the river being a common boundary, and the territorial line of neither state extending beyond the main channel of the river. Appellants say, in order to render either of these charters available, it became necessary to consolidate the two companies, and to secure for the company thus consolidated the consent and approval of each of said states, and the permission of the government of the United States to throw a bridge across one of its navigable rivers.

"On November 20, 1866, articles of agreement were entered into by these two companies thus incorporated, one by this State, the other by the State of Missouri, to consolidate, and such articles, duly filed and recorded in the office of the Secretary of this State, effected the consolidation of these two companies, and such consolidation was approved and legalized by the General Assembly of this State by an act, approved February 6, 1867, entitled "An act to legalize the Quincy Railroad Bridge Company, and to facilitate and encourage the construction of a railroad bridge over the Mississippi river at Quincy.' The first section of this act recognizes the consolidation of these two independent companies and their origin, and refers to the articles of consolidation on file in the office of the Secretary of State of this State, and the name and style of the Quincy Railroad Bridge Company was be-

stowed upon it, and there was conferred upon it all the rights, powers, privileges and immunities which were granted to the railroad bridge company by the act incorporating the same in 1863, and renewed in 1865.

"The consolidation of these companies is expressly recognized, and by the second section the company, as now existing, is fully recognized after the consolidation as a corporation. What is wanting to make appellants a corporation created by the laws of this State we are unable to see.

"But it is said by appellants, this corporation, although it derived some of its powers and in part its corporate existence from this State, derived an equal part from the sovereign State of Missouri, and therefore they are not a corporation created under the laws of either state. To this it is answered, and we think satisfactorily, that the Legislatures of this State and of Missouri can not act jointly, nor can any legislation of the last named state have the least effect in creating a corporation in this State. Hence, the corporate existence of appellants, considered as a corporation of this State, must spring from the legislation of this State, which, by its own vigor, performs the act. It is impossible in the very nature of their organizations that they can do so. They can not so fuse themselves into a single sovereignty, and as such create a body politic which shall be a corporation of the two states, without being a corporation of each state or of either state. As argued by appellee, the only possible status of a company acting under charters from two states is, that it is an association incorporated in and by each of the states, and when acting as a corporation in either of the states it acts under the authority of the charter of the state in which it is then acting, and that only, the legislation of the other state having no operation beyond its territorial limits. We do not, and can not, understand that appellants derive any of its corporate powers from the Legislature of the state of Missouri, but wholly and entirely derived from the General Assembly of this State. Consequently they are embraced in the first section of the revenue act, above cited.

"It is argued by appellants that the framers of the revenue act of 1872 did not intend to include them in the general designation of 'companies or organizations incorporated under the laws of this State,' and this is apparent from the fact that within a year after that law went into

effect the Legislature provided, in explicit terms, for the taxation of the property of the class of corporations to which their company belongs.

"The reference is to the act of May 1, 1873, entitled 'An act to provide for the assessment and taxation of bridges across navigable waters on the borders of this State.'

"We do not perceive this act has any relation to the question raised on this record. The act applies solely to bridge structures, and capital stock is not mentioned in it. The sole object, as appears from its various clauses, especially the emergency clause, was to declare such structures real estate, they, before that time having been regarded as personal property. This is seen by section 15 of the "act for the assessment of property and for the levy and collection of taxes," in force July 1, 1872. That section provides that the track, road or bridge shall be held to be personal property and listed and assessed as such in the town, district, village or city where the same is located or laid. Session Laws, 1872, p. 5.

"The emergency clause in the act of 1873 conclusively determines the purposes for which the act was passed. That clause is as follows: 'Whereas, by existing law, such bridge structure cannot be sold for delinquent taxes, so as to convey a good title thereto, therefore an emergency,' etc, Nothing appears in any of the provisions of this act expressing or impliedly exempting the companies owning such structures from the payment of taxes upon their capital stock.

"It is further argued by appellants that the Legislature intended to limit the tax of capital stock to companies exercising corporate powers wholly and solely under the laws of this State. Appellants say this is evident from the fact that the capital stock of companies existing in part by virtue of the laws of a sister state, can not be equitably assessed or collected.

"We fail to perceive this supposed dilemma. Precise and exact equity can not, perhaps, be done to any corporation in the assessment of its capital stock, but there can be no more difficulty in doing so with such a corporation as appellants than with any other corporation, and although the capital stock of appellants may designate its entire property, as well in Missouiri as in this State, the same may be said of all other corporations having property in different states This is no reason why the capital stock should not be taxed at all. Suppose, as suggested by appellants, the capital stock of appellant should be assessed and taxed

by the authorities of the state of Missouri, would it follow the law of our State is therefore invalid and must not be enforced? Capital stock, or that kind of property designated as such, is not the identical lands, chattels and other articles of property possessed by the corporation, but as this Court defined it in Porter et. al. *v.* Rockford, Rock Island & St. Louis R. R. Co., 76 Ill., 561, means, as used in the act of 1872, not shares of stock, either separately or in the aggregate, but one intended to designate the property of the corporation subject to taxation, not in separate parcels, but as an homogeneous unit, partaking of the nature of personalty, and subject to the burdens imposed upon it at the domicile of the owner. Who, in this case, is the appellant corporation, and whose domicile is here, where it exercises corporate franchises, where its business is done, where its franchises are exercised, and where it is engaged it in the prosecution of the corporate enterprise? Bristol *v.* Chicago & Aurora R. R. Co., 15 Ill., 436. However this corporation may be treated by the authorities of the State of Missouri, the authorities of this State must regard and treat the company as domiciled here, and liable to taxation upon all its property which is of such a nature as to be taxable at the residence of the owner. There is no evidence in the record that appellants have been over-assessed or taxed, or that the slightest injustice has been done to appellants.

"There is no need to pursue this discussion farther. We hold appellant is a corporation created under the laws of this State, and its capital stock properly taxable, and properly assessed and taxed, and the judgment of the Circuit Court was right and must be affirmed."

Following this decision, this same question is again presented to our Supreme Court in the case of the Ohio & Mississippi R. R. Co. *v.* Herman G. Weber, reported in 96 Ill., at page 456. In that case Justice Dickey in deliverinp the opinion of the court says: "Where a corporation is formed under our laws by consolidation of other corporations (which are merged into the new corporation thus formed), and where one of the constituent companies was incorporated under the laws of this State, the new corporation thus formed is to be considered as one of the 'companies incorporated under the laws of this State,' within the terms and meaning of the last clause of the first section of the Revenue Act of March 30, 1872; and

the capital stock (located or used in this State) of such corporation is subject to be assessed and taxed as such. There can be no distinction in principle between the status of such corporation and that of a corporation operating its business in two adjoining states, having a charter for such purpose from each of such states, and that has been decided to be the law applicable to the latter class of companies."

Quincy Bridge Co. v. County of Adams, 88 Ill., 615.

The case just above cited was passed upon in our Supreme Court in 1880, and it seems to have been acknowledged to have been the law, for we find no other case upon the subject until 1896, when the plaintiff in error in this case again raises the question, and our own Supreme Court, in passing upon the case at bar, as reported in 161 Ill., at page 134, Justice Baker rendering the opinion of the Court, in speaking upon this question, said:

"One of the objections made by appellant to the rendition of judgment was, that the capital stock assessments for 1891 and 1892 were by the State Board of Equalization based upon the theory that the entire capital stock of the company was owned and subject to taxation in Illinois, when only one-half thereof was subject to taxation in this State, and the other half in Iowa. It seems that appellant is a consolidated corporation, formed by the consolidation of a corporation in Illinois with one in Iowa, both formed for the construction of a bridge across the Mississippi river, the boundary between said states. Assuming the correctness of the claims made by appellant as to what was the theory upon which the Board of Equalization acted in this regard, it seems to be in conformity with the ruling and decision of this Court in Quincy Bridge Co. v. Adams County, 88 Ill. 615. According to the doctrines of that case, the corporate existence of appellant, considered as a corporation of this State, springs from the legislation of this State, and it is to be regarded and treated by the authorities of this State as domiciled here, and liable to taxation upon all its property which is of such a nature as to be taxable at the residence of the owner; and the kind of property denominated as 'capital stock' does not mean shares of stock, either separately or in the aggregate, but designates the property of the corporation subject to taxation as an homogeneous unit, par-

taking of the nature of personalty, and subject to the burdens imposed upon it at the domicile of the owner. The said Quincy Bridge Co. case is cited and approved in the subsequent case of Ohio and Mississippi Railroad Co. vs. Weber, 96 Ill. 443."

There are several provisions of the statute of this State relating to the assessment and taxation of the capital stock of corporations to which we desire to call the attention of the Court. Secs. 32 and 33 of the Revenue Act, as it stood in 1893 and 1894, are as follows:

"Sec. 32. Bridges, express, ferry, gravel road, gas, insurance, mining, plank road, stage, steamboat, street railroad transportation, turnpike, and all other companies and associations incorporated under the laws of this State, other than banks organized under any special or general law of this State, and the corporations required to be assessed by the local assessors, as hereinbefore provided, shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of its capital stock, setting forth particularly:

"First—The name and location of the company or association.

"Second—The amount of capital stock authorized, and the number of shares into which such stock is divided.

"Third—The amount of capital stock paid up.

"Fourth - The market value, or if no market value, then the actual value of the shares of stock.

"Fifth—The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

"Sixth—The assessed valuation of all its tangible property. Such schedule shall be made in conformity to such instruction and forms as may be prescribed by the Auditor of Public Accounts. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return from the best information which he can obtain.

"Sec. 33. Such statements shall be scheduled by the assessor, and such schedule, with the statements so scheduled, shall be returned by the assessor to the county

clerk. Said clerk shall, at the time he makes his report of assessment, forward to the Auditor all such schedules and statements so returned to him. The Auditor shall annually, on the meeting of the State Board of Equilization, lay before said board the schedules and statements herein required to be returned to him; and said board shall value and assess the capital stock of such companies or associations in the manner provided in this act."

Section 109 of the Revenue Act is as follows:

"The State board of Equalization shall assess the capital stock of each company or association, respectively, now or hereafter incorporated under the laws of this State, in the manner hereinbefore in this act provided. The respective assessments so made (other than the capital stock of railroad and telegraph companies), shall be certified by the Auditor, under direction of said board, to the county clerk of the respective counties in which such companies or associations are located, and said clerk shall extend the taxes for all purposes on the respective amounts so certified the same as may be levied on the other property in such towns, districts, villages or cities in which such companies or associations are located."

The records in these cases disclose a net assessment made by the State Board of Equalization in 1893 of $210,000 (after deducting the value of tangible property) upon a paid up capital stock of $1,000,000 as reported by the company, and in 1894 a net assessment of $225,000 upon a paid up capital stock of $1,000,000. (See Rec. p. 147.) The record pp. 138-9, also contains a statement of the capital stock of the plaintiff corporation made by Theodore Gilman on behalf of the corporation, as follows:

"Statement by Theodore Gilman of capital stock, etc., etc., as required by Section 32 of an act of the Legislature of the State of Illinois entitled, 'An act for the assessment of property and the levy and collection of taxes,' approved March 30, 1872.

"First—Name of company or association: Keokuk and Hamilton Bridge Company. Location of company or association, Keokuk, Iowa. Principal office or place of business in the————of——school district No——T——R——

"Second — Amount of capital stock authorized, $1,000,000; Number of shares into which said capital stock is divided, 10,000.

"Third — The amount of capital stock paid up, $1,000,000; Number of shares actually issued, 10,000.

"Fourth — Market value of the shares of stock, none; if no market value, then the actual value, none.

"Fifth — The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property; first mortgage, $1,000,000; unpaid interest thereon, $900. $1,900,000.

"Sixth — The assessed valuation of: Lands and structure, $218,000; lots ———; personal property ———: total assessed valuation of all tangible property of said company, $218,000.

"I, Theodore Gilman, do solemnly swear that the above statement is true, according to the best of my knowledge and belief.

THEODORE GILMAN.

"Subscribed and sworn to before me this 27th day of August 1894.

(SEAL) S. TABER BAYLES,
Notary Public, Kings County."

This statement is, we submit, conclusive upon plaintiff in error. It was by statute made the basis of the action of the State Board of Equalization. Secs. 32 and 33 of the Revenue act above quoted, made it the duty of plaintiff in error to make such statement and deliver the same to the assessor to return the same to the county clerk; of the county clerk to forward the same to the auditor; of the Auditor to lay the same before the State Board of Equalization, and the Board of Equalization to assess the value of the capital stock of such corporation in the manner provided by that act.

The record discloses that the law concerning the assessment and taxation of the capital stock of the plaintiff in error was complied with in every particular, and plaintiff in error can not now be heard to say either that it was a consolidated corporation, and for that reason only one-

half to be assessed in Illinois, or that its capital stock was other or different than that shown in the foregoing statement. If its capital stock was other or different from that mentioned in the statement, it was its duty to lay the facts before the Board of Equalization, and not wait, as was done in this case, until the assessment was made and the tax levied and then seek, in the County Court, to defeat both assessment and tax on grounds not disclosed in its statement. As we view it, the facts disclosed by the record, do not involve the question of the power of the Board of Equalization to assess the capital stock of a consolidated corporation, nor the extent nor method of such assessment. By the act of 1857, heretofore quoted, the Keokuk and Hamilton Bridge Company was made a body corporate, with power to build, construct maintain and use a bridge for railroad and other purposes over the Mississippi river, or that portion within the jurisdiction of the State of Illinois, etc. In 1894 the Keokuk and Hamilton Bridge Company reported its capital stock to the Board of Equalization for assessment at $1,000,000. Acting upon that report, the Board of Equalization assessed its capital stock at $285,000 and the taxes of 1894 were extended upon that valuation. Counsel for plaintiff in error now claim, and claimed in the County Court, that it was a consolidated corporation and that the assessment should have been made on the basis of one-half instead of its full capital stock. The reply to that is three-fold:

"First—There is nothing in this record showing that it was a consolidated corporation of Iowa and Illinois, but the reverse showed it was an Illinois corporation at the time the Board of Equalization made the assessment.

"Second—That the assessment of the capital stock was based upon a return or report made by the plaintiff in error, stating that its paid up capital stock was $1,000,000, and that that statement is conclusive upon plaintiff in error.

"Third—That the name of the alleged consolidated corporation, the Keokuk and Hamilton Bridge Company, is identical with that of the original corporation, incorpor-

ated under the laws of this State in 1857, and that if such original corporation had changed its capital stock or become consolidated with another corporation, or for any reason it was not assessable in Illinois, it was the duty of the plaintiff in error to bring those facts to the attention of the Board of Equalization before the assessment was made."

Their own statement made to the Board of Equalization is made as an Illinois corporation, and under the laws of Illinois.

We submit that no federal question is presented in this record that justifies plaintiff in error in asking this Court to review the judgment of the Supreme Court of the State of Illinois. The question as to the boundary line between the States of Iowa and Illinois, we have presented elsewhere in this brief, and believe that it has been fully settled by a former decision of this Court, and that no other question is submitted by this record entitling the plaintiff to be heard in review of the decision of the Supreme Court of Illinois.

The assignments of error in the County Court of Hancock County upon appeal by the Bridge Company to the Supreme Court of Illinois, which fully appear on pages 196 and 197 of the printed record, nowhere present a federal question of sufficient importance to entitle the plaintiff in error to be heard in this Court. The first assignment refers solely to the admission of evidence, as well as the second. The third assignment refers to the rendition of judgment on the capital stock and, among other things, uses this language:

"Said capital stock is a tax on personal, not real, property, and is chargeable only at the place of the main office and place of business of the defendant, Keokuk, in the State of Iowa, and is made in violation of the rights of defendant contrary to the laws regulating commerce between the states, and contrary to the constitution and laws of the United States."

Assignment 4 refers solely to the state line between the states. Assignment 5 says:

"The Court erred in ignoring the act of Congress fixing the western boundary of the State of Illinois, and rendering judgment for a tax levied against the property of defendant as in Illinois, when many hundred feet thereof is in Iowa."

The sixth, seventh and eighth have no reference whatever to any matter that would raise a federal question. While it is true that in the objections filed before the Board of Review and before the Board of Supervisors, plaintiff in error was a little more specific, and there charged in one place that certain acts were contrary to and in violation of the fourteenth amendment to the Constitution of the United States. Yet no such statement was made in the assignment of error to the Supreme Court, and none passed upon by the Supreme Court, as will appear from the opinion rendered in said case, found in 167th Illinois at page 16, the first paragraph of which reads as follows:

"This is an appeal from a judgment of the County Court of Hancock county for delinquent taxes assessed against appellant for the year 1894. The grounds of reversal are: First, the assignments were fraudulently made; second, the whole of the capital stock is assessed in this State, whereas an undivided half of it is taxable in Iowa; third, the judgment is upon an assessment upon a part of appellant's bridge not in the State of Illinois, but in the State of Iowa."

Thus it appears that the Supreme Court of Illinois regarded these as the only questions presented by the assignments of error, and in fact, they were, from which it also appears that no federal question was presented, and none passed upon by them.

This Court will not take jurisdiction of an appeal or writ of error from the Supreme Court of the State, unless the record clearly and unmistakably presents to that Court for its determination a federal question. It is not sufficient to state that a federal question is involved or that a decree or judgment of the lower court is in violation of the Constitution of the United States, or some law of the United States; but it must appear from the facts clearly stated

that a federal question was presented and passed upon by the Supreme Court of the State from which such an appeal or writ of error is taken. This Court, in the case of the Oxley Stave Company vs. Butler County, 166th United States, have very fully discussed the questions here presented, and in the opinion in that case on page 653, the Court say:

"Looking into the record we do not find that any reference was made in the Court of original jurisdiction to the Constitution of the United States; nor can it be inferred from the opinion of the Supreme Court of Missouri that that Court was informed by the contention of the parties, that any federal right, privilege or immunity was intended or asserted. For aught that appears the State Court proceeded in its determination of the case without any thought that it was expected to decide a federal question."

We think this same language would equally apply to the opinion rendered in this case by the Supreme Court of the State of Illinois.

It surely will not be contended that there is such a statement and presentation of a federal question, as contemplated by the statute, which says:

"But it can not review the said final judgment even if it denied some title, right, privilege or immunity of the successful party, unless it appears from the record that such title, right, privilege or immunity was specially set up or claimed in the State Court, as applying to such party, under the Constitution or some treaty, statute, commission or authority of the United States."

In the case above referred to, at page 654, this Court, in their opinion, say:

"Do such general allegations meet the statutory requirement that the final judgment of a state court may be reviewed here, if it denies some right, title, privilege or immunity specially set up or claimed under the Constitution or authority of the United States? We think not. The specific contention now is that the decree of the Butler County Circuit Court in the suit instituted by the county of Butler was not consistent with the due process of law required by the Fourteenth Amendment to the Constitution

of the United States. But can it be said that the complainant specially set up or claimed the protection of that amendment against the operation of that decree by simply averring—without referring to the Constitution, or even adopting its phraseology, that the decree was passed against deceased persons as well as in the absence of necessary or indispensable parties."

Again in this same opinion, on page 655, this Court say:

"This statutory requirement is not met if such declaration is so general in its character that the purpose of the party to assert a federal right is left to mere inference."

But without quoting further from that opinion, we submit that it is practically decisive of the case at bar. (See also Pim vs. St. Louis, 165 U. S., 373; Zadig vs. Baldwin, 166 U. S., 485; Kipley vs. Illinois, 170 U. S., 182.)

In Citizens' Bank v. Board of Liquidation, 98th U. S., page 142, the Court say:

"We have often decided that it is not enough to give jurisdiction from the judgments of the State courts for a record to show that a federal question was argued or presented to that Court for decision. It must appear that its decision was necessary to the determination of the cause, and that it actually was decided or that the judgment as rendered could not have been given without deciding it."

In Brown vs. Atwell, 92 U. S., at page 329, the Court say:

"We have often decided that it is not enough to give us jurisdiction from the judgments of the State courts for the record to show that a federal question was argued or presented to that court for decision. It must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it." (See authorities cited).

In Bolling vs. Lersner, 91 U. S., at page 594, the Court say:

"We can not re-examine a judgment or decree of a State Court simply because a federal question was presented to that court for determination to give us jurisdiction. It must appear that such a question was in fact decided or

that its decision was necessarily involved in the judgment or decree as rendered." (See, also, decision cited in this case).

In Santa Cruz County Supervisors vs. Santa Cruz Railroad Company, 111th U. S., at page 362, the Court say, in speaking of the question of jurisdiction, as follows:

"That was not the question presented to or decided by the said Court. In that Court the inquiry was, whether the proceedings of the board, all charged to the county, were according to law; not whether the law under which the proceedings were had was constitutional and binding on the tax-payers.

"The State Court decided that the proceedings were in accordance with the requirements of the law, and thus created an obligation on the part of the county to deliver the bonds, which was not discharged by the repealing statute relied on. This decision involved no question of federal law, and is not reviewable here."

It will be noticed from the record in the case at bar that the constitutionality of the law under which the assessment of this bridge company was made was not raised by plaintiff in error, but they insisted, as in the case above referred to, that the assessment and levy of the taxes was not in conformity to the law then in existence, and a reading of the decision of the Supreme Court of Illinois shows that that was the question passed upon by the Court, and not the constitutionality of any law of the State or of the United States.

In "The Victory" in 6th Wallace, at page 384, Justice Miller, delivering the opinion of this Court, says:

"The question which we are asked to decide, viz: whether such a case as this is one of admiralty, and is therefore exclusively within the jurisdiction of the Courts of the United States, and whether the statute of Missouri which authorized the proceedings is for that reason void—is an interesting one; and if it had been raised and decided in the Court from which the record comes, we would be bound to decide it here. But we do not think it a fair inference, from that record, that the question was presented

to the Court or was decided by it. It has been repeatedly held by this Court that before it can entertain jurisdiction to revise the judgment of a State Court, the point which we are called upon to review must have been raised, and must have been decided adversely to the plaintiff in error. This is so well established that it would be useless labor to cite authorities to sustain it."

In Worthy vs. The Commissioners, 9th Wallace, at page 613, this Court say:

"It is manifest to us that this Court has no jurisdiction of the present case. There was no decision by the Supreme Court of North Carolina against the validity of any treaty or act of Congress, or authority exercised in the United States; nor in favor of the validity of a statute of or authority exercised under a statute, and alleged to be repugnant to the constitution, treaties or laws of the United States. It is true, in the brief of the counsel for plaintiff, it is urged that the right of the plaintiff is protected by the first section of the fourteenth amendment, but this right does not appear to have been set up or specially claimed in the State Court, and this is essential to jurisdiction here."

We again call attention to the fact that from the opinion of the Supreme Court of Illinois in this case, found on page 198 of the printed transcript of record, it will be seen that no question of a federal nature was disposed of in that opinion other than the boundary line between the states, which question has already been decided, as therein stated, by this Court. It will also be noticed that in the assignments of error on pages 196 and 7 of the printed transcript of record, no case is especially set forth which presents any federal question, as will readily be seen by reading the assignments of error.

In Joshua Maxwell and Henry Walker vs. H. Newbold, et al., in 18th Howard, at page 511 and 515, in discussing this question the Court say:

"It is true that in some of the earlier cases, when writs of error to State Courts were comparatively new in this Court, and broader and more comprehensive, the rule was sometimes recognized; and in the case of Miller vs. Nicholls, 4th Wheat. 311, it was said to be sufficient to

give jurisdiction that an act of Congress was applicable to the case, but experience showed that this rule was not a safe one and that it might sometimes happen that, although in one view of the subject, an act of Congress or a clause of the Constitution might be applicable to the case, yet the State Court, upon a different view of the case, might have decided, upon principles of State law, altogether, independent of any provision in the Constitution or laws of the United States, and in no wise in conflict with either."

Further on, after reviewing former opinions, the Court say:

"Accordingly all of the preceding cases are reviewed and commented on in the opinion delivered by the Court in that case." (Crowell vs. Randall, 10 Peter 368.) "And the doctrine clearly announced that in order to give jurisdiction to this Court, it must appear by the record that one of the questions stated in the 25th section of the act of 1789 did arise and was decided in the State Court, and that it was not sufficient that it might have arisen or been applicable. It must appear that it did arise and was applied.

This rule has been uniformly adhered to since the decision of that case." Again the Court further says:

"Applying this principle to the case before us, the writ of error can not be maintained. The questions raised and decided in the State Circuit Court, point altogether for their solution, to the laws of the state, and make no reference whatever to the Constitution or laws of the United States."

The Court in conclusion says:

"The statutes complained of in this case should have been stated, without that the Court can not apply them to the subject matter of litigation to determine whether they violated the Constitution of the United States."

No presentation of any part of the Constitution relied upon by plaintiffs in error or of any law of Congress was specially or particularly set out in the record in this case.

The assignments of error filed, under the rules laid down in the cases above cited, do not present such a case as to entitle plaintiff in error to a review of the decision of the State Court.

Respectfully submitted,

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